

In the High Court of Punjab and Haryana at Chandigarh.

CWP No.8760 of 2004

Date of decision: 31.10.2007

Kulraj Rai

.... Petitioner

Versus

State of Punjab and others

.... Respondents.

Present: Mr.Kulraj Rai, petitioner in person.

Ms.Monica Chhibbar Sharma, AAG, Punjab, for respondent No.1.

Pandit Vinod Kumar Sharma, Advocate for respondent No.2.

Mr.AR Takkar, Advocate, for respondent No.3.

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PERMOD KOHLI, J. (Oral):

The petitioner was appointed as a Legal Assistant vide order dated 13.08.1988 in the Punjab Pollution Control Board (hereinafter referred to as “the Board”). He was promoted as Law Officer Grade-1 vide order dated 06.01.1992. Further promotion of the Law officer is to the post of Legal Advisor in the hierarchy of service. The services of the petitioner are governed under the Punjab State Board for the Prevention and Control of Water Pollution Employees Service Regulations 1980 framed under the Water Prevention and Pollution Act, 1974 (hereinafter referred to 1980 Regulations). Regulation 8 deals with the method of recruitment to the post under the Board. Under the 1980 Regulations, the post of Legal Advisor was required to be filled up by promotion alone from the Law Officers Grade-1 possessed of the qualifications as prescribed under the Rules.

However, these Rules came to be amended vide the Punjab Pollution Control Board Employees Service Regulations, 2002, which received the approval of the Government on 28.04.2003. Under the amended regulations, the qualifications and the method for filling the said post is as under:-

“1. Designation of the Post: Legal Advisor.

2. Percentage of appointment:

| <u>Mode of recruitment.</u>      | <u>By direct recruitment</u> | <u>By Promotion</u> |
|----------------------------------|------------------------------|---------------------|
| i)By direct recruitment          | In case no suitable          | 100%                |
| ii)By promotion.                 | Candidate is available       |                     |
| iii)By transfer or<br>deputation | for promotion.               |                     |

Qualification for direct recruitment:

At least Bachelor's degree in Law from a recognized university with at least five years experience as Assistant District Attorney Grade-I, Law Officer or must have practiced at the Bar for at least eight years.

Knowledge of Computer.

The candidate must have undergone a computer course of six months duration from a reputed institute.

Qualification for promotion:

From amongst the Law Officers working in the Board who have an experience of working as such for a minimum period of fifteen years.

Knowledge of Computer.

The candidate must have undergone a computer course of six months duration from a reputed institute.

By Transfer or Deputation:

From amongst the employees working on equivalent posts in any department of the Government of Punjab. OR

Possessing Bachelor's degree in Law with minimum 55% marks from a recognized university with at least 15 years experience on Class-I, II and III posts in the Department of Government preferably in Punjab Civil Secretariat which should also include knowledge/experience of dealing with legal matters/cases.

Knowledge of Computer.

The candidate must have undergone a computer course of six months duration from a reputed institute.”

Though the petitioner claims that he is fully qualified under 1980 Regulations which are applicable to his case, yet the case of the respondents is that 1980 Regulations are substituted by Regulations of 2002 and under the amended Regulations, the petitioner is not qualified, as the petitioner has less than 15 years experience as a Law Officer.

Be that as it may, the grievance of the petitioner is that he was

eligible for promotion to the post of Legal Advisor, but the respondents with a mala fide intention have abolished the post of Legal Advisor and, thus, marred his chances of promotion. He has made allegations against respondent No.3 which I shall deal in the later part of the judgment.

It is the admitted case of the parties that the post of Legal Advisor which was earlier available, stands abolished. Reference is made to the order of the government dated 02.09.2003 (Annexure P-16), whereby the government had decided to abolish the post of Legal Advisor on the ground that it is not required after restructuring of the Board. This order was endorsed to the Chairman, Punjab Pollution Control Board, Patiala, and the Chairman was directed to get the post abolished from the Board as the same is not required by the Punjab Pollution Control Board. Consequent upon the approval of the government, the Board adopted a resolution in its meeting dated 15.12.2003 vide agenda item No.121 and the Board agreed with the decision of the Government to abolish the post of Legal Advisor. The Board also did not agree with the proposal to upgrade the post of Legal Assistant to that of Law Officer. The minutes of the meeting of the Board were confirmed in the next meeting held on 05.03.2004. It is further the admitted case of the parties that as at present no post of Legal Advisor is available in the Board. It is this order which is challenged in the writ petition alongwith decision of the Board. It may be useful to refer the prayers of the petitioner made in the writ petition which are as under:-

“(i) Issue a writ in the nature of certiorari quashing the order dated 4.9.2003 (Annexure P.16) vide which the post of Legal Advisor in the Respondent-Board has been abolished in a totally

illegal and arbitrary manner and because of mala fide of respondent No.3;

(ii) Issue a writ in the nature of mandamus directing the official respondents to supply to the petitioner the minutes of 121<sup>st</sup> and 122<sup>nd</sup> meeting of the Board of Directors held on 5.12.2003 and 5.3.2004 respectively vide which the order abolishing the post of Legal Advisor has been confirmed and further with a prayer to issue a writ in the nature of certiorari quashing the same;

(iii) Issue a writ in the nature of mandamus directing the respondents to consider and appoint the petitioner to the post of Legal Advisor being the senior most and most meritorious candidate in the Respondent-Board;

(iv) It is further prayed that in the peculiar facts and circumstances of this case, this Hon'ble Court may be pleased to issue any other appropriate order, writ or direction that it deems fit;

(v) Dispense with advance notices upon the respondents;

(vi) Dispense with filing of certified copies of Annexures;

(vii) Costs of the petition may also be awarded.”

The grievance of the petitioner is that the abolition of post is

due to mala fides on the part of respondent No.3. The allegations of mala fide have been made in the paragraphs 9, 10, 13 and 21 to 29 of the writ petition. It is alleged that after dissolution of the Board, Shri N.S. Tiwana, respondent No.3, was appointed as Administrator, he, placed his nephew J.S.Tiwana, working as Law officer in the Board, above petitioner at Serial No.3, in the seniority list though he was junior to the petitioner. It is further stated that the petitioner made a representation and he was called by Mr.N.S.Tiwana and told that experience is not good enough for being appointed to the post of Legal Advisor. It is further alleged that this was done by respondent No.3 in order to promote the chances of promotion of J.S. Tiwana, his nephew. The petitioner also claims to have made representations to the Chairman of the Board alleging mala fides against respondent No.3. It is further alleged that in January, 2003, on the transfer of Shri Satish Chandra, IAS, who was the Chairman of the Board, additional charge of the Chairman of the Board was also given to Mr. N.S. Tiwana and he ensured to block the chances of promotion of the petitioner to the post of Legal Advisor to keep the channel of promotion open for his nephew J.S. Tiwana. It is also the allegation of the petitioner that he was reverted back to a lower post at the instance of Shri N.S. Tiwana. The next allegation of the petitioner is that he was transferred from Patiala to Zonal Office at Jalandhar, by respondent No.3 only to harass him. According to the petitioner, his case was recommended for appointment as legal Advisor, but Shri N.S. Tiwana wrote a letter to the government on 02.05.2003 recommending abolition of post due to alleged re-structuring of the Board. It is alleged that restructuring of the Board was only a device to deny promotion to the petitioner. The petitioner also claims to have made representations to the Chief Minister, Punjab, against respondent No.3.

These allegations have been met by respondent No.3 who has filed a separate written statement. It is stated that J.S. Tiwana is not his real nephew, but is a distant relation. As regards the allegation of transfer of the petitioner to Zonal Office, Jalandhar, is concerned, the petitioner was transferred vide Annexure P-14 which order itself indicate that the transfer of the petitioner was made on his own request. Respondent No.3 also placed on record Annexure R-3/1, which is a copy of the representation made by the petitioner seeking his transfer to Jalandhar. It is, accordingly, stated on behalf of respondent No.3 that the petitioner was transferred to Jalandhar at his own request. This fact is not dispute by the petitioner.

Mr.A.R. Takkar, learned counsel appearing for respondent No.3 has further stated that the post was abolished in September. 2003, when Shri N.S. Tiwana, was not the Chairman of the Board. In any case, the Board is a Statutory Body which comprises of Senior Officers of the Government of Punjab and other officers from different disciplines. As far as the reversion of the petitioner is concerned, the petitioner has placed on record translated copy of the office order dated 28.01.2003, whereby he along with two others was deputed from Chandigarh to Board's office at Patiala, designation of the petitioner is shown as Legal Advisor. However from the original document which is in Punjabi, it appears that at the relevant time, the petitioner was only a Law Officer and the translated copy is not correct version of the original document. Apart from above, this document shows that the above said order was passed by the Secretary, Science,Technology and Environmental, Non-Conventional Energy Department, Punjab, and not by respondent No.3, Shri N.S. Tiwana.

I have heard the petitioner in person and the learned counsel for

the respondents at length and perused the record of the case.

As far as the allegations of mala-fide are concerned, all the allegations have been met by respondent No.3 and seems to be only bald allegations without any substance. The petitioner was not reverted by respondent No.3. He was transferred at his own request and J.S. Tiwana is not the real nephew of respondent No.3 as alleged. The other arguments of the petitioner that the post has been got abolished with a view to ensure the chances of promotion of J.S. Tiwana, so called nephew of respondent No.3, is self defeating. If the intention of respondent No.3 was to ensure promotion of his nephew over and above the petitioner, then there was no question of recommending the name of the petitioner for appointment on the post. By abolition of post, the chances of promotion for every one, including J.S. Tiwana, who is stated to be the nephew of respondent No.3, are marred. There is no convincing material on record which may inspire confidence of the Court. As far the mala fides are concerned, the Board in its wisdom decided to abolish the post. The government has already granted approval as noticed herein above. It is the Governments prerogative to keep a post, create a post or abolish the same, if the same is not required. The Court cannot sit over the judgment of the employer. Otherwise also, availability of post in an hierarchy of service does not mean that employee has a right to occupy that post. Even if the post is available, still it is the prerogative of the employer to fill up the same or not, depending upon the exigencies of the situation and administrative necessity. It is settled law that promotion is not a right. A public servant has only a right to be considered for promotion subject to his eligibility and the desire of the government to fill up the promotional post. It is not in

dispute that the name of the petitioner was recommended for promotion , but the fact remains is that he was never promoted in accordance with rules and not even considered for promotion at any given time. He cannot claim a right to occupy the post. His representations are still pending before the government.

Under the above circumstances, the petitioner cannot be granted the relief claimed in the petition. I find no merit in the present petition and the same is hereby dismissed with no order as to costs. However, it is for the petitioner to pursue his representations which are still pending before the Government.

31.10.2007  
BLS

(PERMOD KOHLI)

Note: Whether refer to reporter? YES

